

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRANS-SPEC TRUCK SERVICE, INC.
d/b/a TRUCK SERVICE,

Plaintiff

vs.

CATERPILLAR INC.

Defendant

CIVIL ACTION NO. 04-11836-RCL

AFFIDAVIT OF CLARISSA KOLMER

I, Clarissa Kolmer, of full age, on my oath depose and say as follows:

1. I have been employed by Caterpillar Inc. since January, 1989. My current position is marketing development manager for on-highway remanufactured product. I have held a variety of positions with the company, however, and from 2001 to 2005 held the position of warranty supervisor. My work for Caterpillar has given me detailed personal knowledge of the types and meaning of the records Caterpillar generates and maintains concerning warranty claims it receives.
2. Caterpillar routinely creates and keeps electronic records with respect to all claims it receives for payment under warranty for parts and services provided to owners of Caterpillar truck engines. These electronic records are kept in what is known at Caterpillar as the SIMS system. Caterpillar generates and maintains its SIMS records in the ordinary course of its business and routinely depends upon them for a variety of business purposes. Caterpillar

routinely keeps such records for considerably longer than five years and, therefore, still has such records with respect to engines sold in 1999 or later.

3. Among the information contained in the electronic warranty records maintained by Caterpillar in the SIMS system are the serial number of each engine with respect to which Caterpillar has received a warranty claim, information about the standard Caterpillar warranty that was or is applicable to that engine, a description of the parts and labor for which warranty reimbursement is sought, and the amounts Caterpillar paid for parts and labor in response to the warranty claim.

4. I have accessed the SIMS system and reviewed Caterpillar's regularly maintained warranty records with respect to the engines I understand are involved in this lawsuit. I understand those engines to be the ones with serial numbers ending in 2KS27780, 2KS27897, 2KS27878, 2KS27936, 2KS27904, 2KS27955, 2KS28378, 2KS27844, 2KS27905, 2KS27999, 2KS27877, 2KS28368, 2KS27861, 2KS27956, 2KS27857, 2KS28276, 2KS27914, 2KS27953, 2KS27893, 2KS27931, 2KS27835, and 2KS27791.

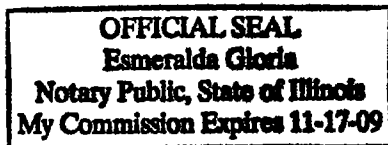
5. The records maintained by Caterpillar disclose that some of the engines itemized in ¶4 of this affidavit were covered by Caterpillar's standard warranty designated SELF5271 and the rest were covered by Caterpillar's standard warranty designated SELF5302. The reason there are two warranties is that one warranty applied to engines sold to the end user on or after January 1, 2000, and the other applied to engines sold before that date. The records disclose that Caterpillar received and paid numerous claims under one or the other of those standard warranties with respect to these engines. All such warranty payments were made before the year 2005. Caterpillar's warranty payments with respect to the engines, in the aggregate, total many thousands of dollars.


6. The information in this affidavit is based on my personal knowledge with respect to Caterpillar's warranty administration system and on information I have been able to obtain, because of my personal knowledge of that system, from the records described in this affidavit which Caterpillar generates and maintains in the ordinary course of its business.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 16 DAY
OF MARCH, 2006.


CLARISSA KOLMER

On this ___ day of March, 2006, before me, the undersigned notary public, personally appeared Clarissa Kolmer, well-known to me to be the person whose name is signed to the preceding affidavit, and who swore or affirmed that the contents of the affidavit are truthful and accurate to the best of her knowledge.




Notary Public
My Commission Expires: